

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,	:	Criminal Case No. 3:11-cr-079
	:	Civil Case No. 3:15-cv-044
vs.	:	
	:	District Judge Timothy S. Black
KEITH A. WATSON,	:	Magistrate Judge Michael R. Merz
	:	
Defendant.	:	

**ORDER:**

**(1) ADOPTING THE INITIAL AND SUPPLEMENTAL  
REPORTS AND RECOMMENDATIONS OF THE MAGISTRATE JUDGE;  
(2) DENYING WITH PREJUDICE DEFENDANT’S MOTION TO VACATE;  
(3) DENYING DEFENDANT A CERTIFICATE OF APPEALABILITY;  
(4) CERTIFYING THAT ANY APPEAL WOULD BE OBJECTIVELY  
FRIVOLOUS; AND (5) CLOSING THIS CASE IN THIS COURT**

This case is before the Court on the Report and Recommendations (Doc. 148) and the Supplemental Report and Recommendations (Doc. 168) of United States Magistrate Judge Michael R. Merz regarding Defendant Keith A. Watson’s motion to vacate pursuant to 28 U.S.C. § 2255 (Doc. 137).<sup>1</sup>

In his initial Report and Recommendations, the Magistrate Judge recommended that this Court dismiss Defendant’s motion to vacate with prejudice, deny a certificate of appealability, and certify that any appeal would be objectively frivolous and therefore should not be permitted to proceed *in forma pauperis*. (Doc. 148 at 18). Defendant filed objections to the Report and Recommendations nearly two weeks after the deadline. (Doc. 162). Despite the untimely filing of Defendant’s objections (nearly two weeks

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<sup>1</sup> As ordered by this Court, the Government filed an Answer (Doc. 140) and Defendant filed a reply (Doc. 141).

after the deadline for objections had expired), this Court recommitted the case to the Magistrate Judge for reconsideration of the merits of Defendant's motion to vacate. (Doc. 165).<sup>2</sup>

Pursuant to the Court's recommitment order, the Magistrate Judge issued a Supplemental Report and Recommendation, wherein it is recommended that the Court grant Defendant relief by filing an amended judgment which eliminates all reference to 18 U.S.C. § 2. In all other respects, however, the Magistrate Judge recommends that the Court deny Defendant's motion to vacate with prejudice, deny a certificate of appealability, and certify that any appeal would be objectively frivolous. (Doc. 168 at 11). The Government gave notice that it did not object to the recommended amendment to the judgment and that it concurred with the Supplemental Report and Recommendation in all other respects. (Doc. 173).

As required pursuant to 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), this Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all objections and filings in this matter. Upon consideration of the foregoing, the Court determines that the initial and Supplemental Report and Recommendations (Docs. 148, 168) should be, and are hereby, adopted in their entirety. Accordingly:

1. The initial and Supplemental Report and Recommendations (Docs. 148, 168) are hereby **ADOPTED** in their entirety;
2. Defendant's motion to vacate pursuant to 28 U.S.C. § 2255 (Doc. 137) is hereby **DENIED** with prejudice;

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<sup>2</sup> The Government gave notice that it fully concurred with the initial Report and Recommendations and did not intend to file a response to Defendant's objections. (Doc. 167).

3. Defendant's objection to the inclusion of 18 U.S.C. § 2 in his Judgment of Conviction is **substantively OVERRULED**. However, pursuant to Fed. R. Crim. P. 36, the Court will issue an amended Judgment of Conviction to correct its clerical error by eliminating all reference to 18 U.S.C. § 2, as recommended in the Supplemental Report and Recommendations.
4. All other objections to the initial and Supplemental Report and Recommendations are **OVERRULED in their entirety**;
5. Having considered the standard under 28 U.S.C. § 2253(c), Defendant is **DENIED** the issuance of a certificate of appealability;
6. The Court **CERTIFIES** that any appeal would be objectively frivolous and therefore Defendant shall be **DENIED** leave to proceed *in forma pauperis*; and
7. The above-captioned case is **DISMISSED with prejudice**, and **the Clerk shall enter judgment accordingly**, whereupon this case shall be **TERMINATED** on the docket of this Court.

**IT IS SO ORDERED.**

Date: August 8, 2016

s/ Timothy S. Black  
Timothy S. Black  
United States District Judge